IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.01.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT APPEAL NO.4041 OF 2004

and WAMP.No.7618 of 2004

1.N. Radhakrishnan (died)
2.N. Gunesekaran
3.N. Kanagarathinam (died)
4.N. Samivel
5.N. Sampathkumar
6.N. Kathirvel
7.R. Kumaresan
8.S. Senthilvelan
9.R.Kanakavalli
10.R. Santhakumari
11.K. Kannammal
12.K. Kavitha
13.K. Sangeetha
14.K. Priyadharshini

(Appellants 9 and 10 substituted as L.Rs. of the deceased first respondent and appellants 11 to 14 substituted as L.Rs. of the deceased third respondent vide Order of court dated 26.10.2006 made in WAMP.No.1599 and 1600 of 2006.).. Appellants/Petitioners.

vs.

1.State of Tamil Nadu rep. By
Secretary to the Government of
Tamil Nadu, Department of Energy
Fort St. George, Madras 600 009.

2.The Revenue Divisional Officer
Collector's Office Compound
Salem. .. Respondents/Respondents.

Writ appeal filed under Clause 15 of the Letters Patent against the order of the Hon'ble Mr. Justice V. Kanakaraj made in W.P.No.1499 of 1997 dated 01.10.2004.

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WP.No.1499/1997: Petition presented to this Court under Article 226 of the Constitution of India, to issue a Writ of Certiorari, call for the entire records relating to the G.O.Ms.No.728 P.W.[Electricity] dated 30.3.83 published in the Tamil Nadu Gazette dated 20.4.1983 being the notification under Section 4[1] of the Land Acquisition Act and also the consequential declaration under Section 6 of the L.A. Act covered in GO.Ms.NO.10 [Department of Energy] dated 13.1.1997 on the file of the respondents pertaining to the acquisition of the lands belonging to the petitioners in S.No.92/4 of Annadanapatti Village, Salem Taluk, Salem District, quash the notification.

For appellants : Mr. D. Shivakumaran

For respondents : Mr. K. Elango
Spl. Govt., Pleader

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JUDGMENT

(Judgment of the Court delivered by P.SATHASIVAM,J.)

Aggrieved by the order of the learned Single Judge dated 01.10.2004 made in W.P.No.1499 of 1997, the writ petitioners, whose lands are under acquisition, preferred the above writ appeal.

2. Heard Mr. D. Shivakumaran, learned counsel for the appellants and Mr. K. Elango, learned Special Government Pleader for the respondents.

3. For convenience, we shall refer the parties, as arrayed before the learned single Judge.

4. In view of the order to be passed hereunder, there is no need to refer all the factual details, except required for the disposal of the appeal. According to the petitioners, the lands belonging to their family were sought to be acquired for the purpose of expansion of 230 KV Sub Station and for construction of residential quarters for the staff of Tamil Nadu Electricity Board. The petitioners filed W.P.No.13331 of 1985, to quash the said proceedings ending with declaration under Section 6 of the Land Acquisition Act, 1894 [in short, "the Act"]. The said writ petition was allowed and the matter was remanded to the Government, first respondent therein, for fresh disposal in accordance with law. Thereafter, declaration under section 6 of the Act was made on 13.1.1997. Then, the petitioners filed the writ petition, W.P.No.1499 of 1997 praying to quash the notification issued under Section 4(1) of the Act dated 30.03.1983 and the declaration under Section 6 of the Act dated 13.01.1997.

5. The main ground of attack was that the time gap between notification under Section 4(1) and declaration under Section 6 of the Act is beyond the prescribed period of three years (as it stood then). However, the learned Judge, without adverting to the said aspect, dismissed the writ petition. Challenging the same, the unsuccessful petitioners have filed the present writ appeal.

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6. The only question to be considered in this appeal is, whether the declaration made under Section 6 of the Act which was published in

the Government Gazette dated 16.01.1997, is within the prescribed period of three years (as it stood then) from the date of 4(1) notification or not?

7. The particulars furnished by the petitioners as well as the learned Special Government Pleader show that Section 4(1) notification was approved in G.O.Ms.No.728, Public Works (Electricity) Department on 30.03.1983 and the same was published in the Tamil Nadu Government gazette on 20.04.1983 and in the locality, publication by tom-tom was effected on 25.04.1983. Enquiry under Section 5-A and 3(b) read with Section 55 (1) of the Act was conducted on 07.06.1984. The Government approved Section 6 declaration in G.O.Ms.No.1434 on 21.08.1985 and the same was published in the Government gazette on 18.09.1985; in the newspapers on 24.09.1985 and in the locality on 27.12.1985. In W.P.No.13331 of 1985, this Court granted interim stay on 24.12.1985 and the same was modified and made absolute with regard to dispossession alone on 16.06.1987. On 19.01.1996, this Court allowed the said writ petition, WP.No.13331 of 1985 and remanded the matter back to the Government, first respondent therein for fresh disposal. On 18.10.1996, the first respondent directed the Revenue Divisional Officer, Salem, second respondent herein, to initiate a fresh 5-A enquiry. On 13.12.1996, 5-A enquiry notice was sent to the petitioners. The petitioners submitted their objections through their counsel by registered post with acknowledgment due on 24.12.1996 and 5-A enquiry was conducted on 30.12.1996. The objections of the petitioners were over-ruled by proceedings dated 04.01.1997 and the same was sent to the first respondent for approval. Section 6 declaration was published in the Gazette and in the Tamil daily "Dinakaran" on 16.01.1997. On 05.02.1997, this Court admitted W.P.No.1499 of 1997 and also granted interim stay. Ultimately, on 01.10.2004, the said writ petition was dismissed.

8. In this regard, it is useful to refer the details furnished by the learned Special Government Pleader, which reads as under:

1	The time gap between the date of publication under section 4(1) of the Land Acquisition Act (locality publication by tom-tom) and the date of filing of the writ petition viz., 25.4.1983 to 25.12.1985	2 years 7 months 29 days
2	The Time gap from the date of disposal of the writ petition and the date of fresh declaration under Section 6 of the Act viz., 19.01.1996 to 16.01.1997.	11 months 21 days
	Total time gap between 4(1) notification and 6 declaration including the period of stay.	3 years 7 months 20 days

From the above, it is clear that the declaration under Section 6 of the Act, which was published in the gazette on 16.01.1997, is undoubtedly

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beyond the prescribed period of three years (as it stood then). Therefore, we sustain the argument of the learned counsel for the appellants. As said earlier, these relevant aspects were not noticed by the learned Judge. On this ground, the acquisition proceeding is liable to be quashed; accordingly, it is quashed. However, the respondents are free to proceed afresh, if they so desire in accordance with law.

The writ appeal is allowed with the above observation. No costs. Consequently, connected WAMP., is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Secretary to the Government,
of Tamil Nadu
Department of Energy
Fort St. George, Madras 600 009.

2.The Revenue Divisional Officer
Collector's Office Compound
Salem.

+ 1 CC To Mr.D.Shivakumaran, Advocate SR NO. 3611

+ 1 CC to the Government Pleader SR NO 3573

W.A.No.4041 of 2004

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